Article 370 and 35A:

Constitutional Architecture of Ethnic Cleansing in Kashmir (1954-2019)

Sandeep Bhalla

sandeepbhallaadvocate [at] gmail [dot] com

23 December 2025

Abstract:

Article 35A of the Indian Constitution, inserted through Presidential Order C.O. 48 in 1954, denied fundamental rights protections to specific classes of Indian citizens for 65 years while remaining systematically concealed from legal education and judicial awareness. This paper establishes that:

(1) Post-1973, Article 35A and 370 contravened the Basic Structure Doctrine by eliminating judicial review and denying fundamental rights;
(2) Article 35A was void ab initio (non est) on several grounds;
(3) Article 35-A was arbitrary and violative of part III of the Constitution;
(4) Insertion of Article 35A via Presidential Order violated Article 368's constitutional amendment procedure;
(5) Article 370(1)(d) was improperly interpreted as granting broad legislative power when it should have been read down to permit only limited operational orders;
(6) systematic concealment violated rule of law principles requiring public, accessible law.

Through textual analysis, primary documentation, and ground-level observation, this paper demonstrates that Article 35A created a hierarchical legal framework discriminating on all five constitutionally prohibited grounds: place of birth, religion, caste, sex, and race. Migrants from West Pakistan remained stateless for 72 years (1947-2019); Valmikis endured hereditary occupational bondage for 62 years (1957-2019); and women lost all rights upon marrying outside the state.

Between January 1989 and March 1990, systematic violence targeting the Hindu minority population preceded their exodus from Kashmir Valley. Targeted killings, public threats through mosque announcements, and organized intimidation campaigns created an atmosphere of terror. Properties were marked, selective assassinations of prominent community members occurred, and public declarations demanded departure or conversion. This coordinated violence, enabled by the legal framework of Article 35A, resulted in the near-total displacement of 250,000-300,000 Kashmiri Hindus and the seizure of their properties under religious justification.

The Supreme Court's 46-year failure (1973-2019) to enforce its own Basic Structure Doctrine enabled catastrophic humanitarian consequences. This research establishes the causal chain from legal framework to ethnic cleansing and applies the non est doctrine to conclude that all actions under Article 35A's purported authority lacked constitutional foundation.

©author

This paper examines and rejects standard constitutional justifications advanced in defence of Article 35A, addressing objections based on identity, federal accommodation, security, accession, parliamentary acquiescence, causation, and the non-est doctrine.

This paper does not challenge the Supreme Court's 2023 judgment on the abrogation of Article 370, which addressed the legality of the constitutional process adopted in 2019. That judgment did not examine the constitutionality of Article 35A while it operated, nor its compatibility with Part III or the basic structure of the Constitution. The questions analysed here therefore remain outside the scope of the Court's determination.

1. Introduction

1.1. The Constitution of India was enacted on 26 January 1950. The draft Constitution did not have Article 370 in it. It was introduced in the Constituent Assembly on 17 October 1949 (as draft Article 306A) and taken up for discussion. Under Article 370, J&K was granted a *distinct degree of autonomy* within India's federal system. Additionally, the Draft Article provided for the establishment of the J&K Constituent Assembly with the purpose of drafting a unique J&K Constitution. This Assembly had the authority to determine which provisions of the Indian Constitution would apply to the State in the future.

1.2. The member Shri Hasrat Mohani questioned, during debate, why J&K received special constitutional status. Drafting Committee members responded that unique political circumstances required such provisions. They relied on the ongoing conflict, UN involvement, and promises made to the State regarding its right to determine its political future. Shri Mohani found this unconvincing, arguing it was discriminatory since other Princely States like Baroda received no such concessions.

1.3. The Constituent Assembly adopted the Draft Article without amendments on 17 October 1949.

1.4. Article 35A was added through Presidential Order C.O. 48 of 1954, following the Delhi Agreement between Prime Minister Jawaharlal Nehru and J&K Prime Minister Sheikh Abdullah. It empowered the J&K legislature to define permanent residents and confer special rights on them while explicitly exempting such laws from challenge on grounds of violating fundamental rights.

1.5. On August 6, 2019, Article 370 of the Constitution was rendered inoperative through a Presidential order on the recommendation of both Houses of Parliament, simultaneously rendering Article 35A inoperative.

1.6. Article 35A was introduced by Presidential Order in 1954. Yet it was not part of any Government of India publication or authoritative constitutional compilation. It remained inaccessible through ordinary legal channels for most of its operative life. Digitised copies of the 1954 Order and the relevant Gazette material surfaced widely only after 2019, following the abrogation of Articles 370 and 35A.

2. Constitutional Anomaly:

2.1. Article 370 and Article 35A created discrimination on several constitutional grounds: religion, descent, sex, and place of birth. The most fundamental discrimination was that Article 35A explicitly denied fundamental rights protections to Indian citizens who were non-permanent residents of Jammu & Kashmir.

2.2. Article 35A provided that fundamental rights including Article 14 (right to equality), Article 19(1)(f) and 31 (right to property till the 44th Amendment of Constitution), Article

©author

19(1)(e) (right to settle anywhere), Article 21 (right to life and personal liberty), and Article 22 (protection against preventive detention) would not apply to any law providing special privileges to permanent residents in the State.

2.3. Thus, the non-State Subjects who were citizens of India living in Jammu & Kashmir were denied protection under Article 14 (equality), Article 15 (prohibition of discrimination), Article 16 (equality of opportunity in employment), Article 25 (freedom of practice and propagation of religion), and Articles 29-30 (protection of minority interests).

2.4. This meant that for seven decades, Indian citizens residing in J&K but lacking "Permanent Resident" status had no recourse to fundamental constitutional protections that applied to all other Indians. The practical effect of the anomaly shall be discussed in a later section.

3. Discrimination Created by Article 35A

3.1. Article 35A created five levels of discrimination:

3.2. PLACE OF BIRTH DISCRIMINATION: The State Subject laws created a hereditary legal status based on pre-1947 classifications. The following persons qualified as "Permanent Residents":

- Those who were state subjects on May 14, 1954
- Those who had resided in J&K for 10 years before that date and lawfully acquired immovable property

  3.2.1. The other persons were not treated as "Permanent Residents" even if they were citizens of India from other states. They were treated as non-permanent residents who had no right to:

  3.2.1.1. purchase immovable property
  3.2.1.2. settle permanently
  3.2.1.3. employment in the state government
  3.2.1.4. vote in state assembly elections
  3.2.1.5. access state scholarships and welfare schemes
  3.2.1.6. enroll in state educational institutions

  3.2.2. This violated Articles 14 (equality), 16 (equal opportunity in employment), 19 (freedom to reside and practice profession anywhere), and 21 (life and liberty) of the Indian Constitution.

  3.3. RELIGION-BASED DISCRIMINATION: The people who migrated to J&K during the 1947 Partition, predominantly Hindu and Sikh who fled West Pakistan, were denied permanent resident status despite living in the State for decades. Despite the Settlement Act of 1982 and periodic assurances, these migrants remained without permanent resident certificates, denied property rights, employment, and voting rights.

  3.3.1. Hindu and Sikh who were Indian citizens were denied permanent resident status and the associated rights in Jammu and Kashmir. Yet certain non-citizen groups, including Rohingya migrants from Myanmar without recognised legal status, were provided housing and shelter through administrative arrangements of the State. The Kashmiri persons (mostly Muslims) who had crossed over from Pakistan were entitled to "Permanent Resident Status" by Article 6 of the

©author

Constitution of the State of Jammu and Kashmir. The framework created de facto preferential treatment on religious basis, without explicit religious language.

3.3.2. This differential treatment did not arise from constitutional entitlement but from decisions taken at the level of governance. Its significance lies in the resulting inversion: Indian citizens were excluded from basic rights on the basis of permanent resident status, while non-citizens received humanitarian accommodation. The permanent resident regime under Article 35A made this outcome possible by insulating the exclusion of citizens from constitutional scrutiny.

3.4. RACE/CASTE-BASED DISCRIMINATION: In 1957, Valmikis were brought to J&K for sanitation work in municipalities. They were given permanent resident certificates with the condition that their descendants could reside in the state only if they maintained the same occupational status. Their children were not allowed to change professions.

3.4.1. Sanitation workers working in the state for decades were not given equal rights like Permanent Residents, and this discrimination continued until Article 35A was abrogated in 2019.

3.4.2. Scheduled Castes and Scheduled Tribes: Members of Scheduled Castes from J&K did not have access to affirmative action programs for educational, economic, and political opportunity available to SC/ST members elsewhere in India.

3.5. GENDER-BASED DISCRIMINATION: Women born in J&K with permanent residency lost all rights if they married men from outside the state, including property ownership, job access, education, and voting. Permanent Resident Cards issued to women explicitly read "Valid till Marriage".

3.5.1. The 1927 notification stated that a woman marrying outside the state would lose her status as a state subject. Her children could not inherit property from her or obtain permanent resident status.

3.5.2. This created a gender asymmetry. If a man married a woman from outside J&K, his wife, regardless of whether she was from another Indian state or a foreign country, became entitled to a permanent resident card and all its privileges. Their children also received permanent resident cards.

3.5.3. The women risked losing rights by choosing whom to marry. Men faced no such penalty or restrictions.

3.5.4. Legal Challenge and Attempted Rollback: In October 2002, the J&K High Court ruled in State vs Dr. Susheela Sawhney that daughters marrying non-residents would not lose permanent resident status. However, in March 2004, the J&K Legislative Assembly passed the Permanent Resident Status (Disqualification) Bill to overturn this judgment, but the Legislative Council chairman adjourned without voting, preventing the bill's passage.

3.5.5. Other Gender-Based Discrimination: Until Article 370's abrogation, Kashmiri women were excluded from protection under comprehensive Indian laws like Protection of Women from Domestic Violence Act, 2005 and Muslim Women (Protection of Rights on Marriage) Act, 2019.

©author

4. Article 370 Constrained Power of Central Government

4.1. Article 370 significantly constrained the central government's ability to legislate and govern in Jammu & Kashmir. The provision limited Parliament's legislative power to matters specified in the Instrument of Accession, primarily defense, foreign affairs, and communications. All other matters required the concurrence of the J&K government. Following are the key restrictions on the authority of Central Government and Parliament:

4.1.1. Central laws did not automatically apply to J&K without state government concurrence
4.1.2. Emergency provisions under Article 356 (President's Rule) required modification
4.1.3. Fundamental Rights under Part III applied only partially
4.1.4. Directive Principles largely did not apply
4.1.5. The state maintained its own constitution and flag

4.2. Article 370 conferred on the President the powers to modify the Constitution in its application to the State of Jammu and Kashmir by issuing an Order to that effect. This is legislation by Executive Order.

4.3. Article 35A purported to operate as a constitutional provision, but its source lay entirely in executive action under Article 370 rather than constituent power under Article 368. It is therefore analysed as a provision that functioned as a constitutional amendment in effect, while remaining executive in the procedure of origin.

5. Legislative Progress Stalled

5.1. This anomalous Constitutional scheme ensured that many progressive laws could not be applied to J&K. These were the Prevention of Child Marriage Act, Right to Education, Land Acquisition Act, Multiple Disability Act, Senior Citizens Act, and Delimitation Act *et cetera*. Additionally, bureaucratic accountability was weakened as the Prevention of Corruption Act was also not applicable.

6. Impact on Governance Capabilities:

6.1. This arrangement created a dual constitutional framework where the central government's emergency powers, law enforcement coordination, and development initiatives faced procedural barriers. This hindered the effective response to security challenges and delayed implementation of welfare schemes.

7. Counter-Arguments:

7.1. Several justifications have been advanced in defence of Article 35A. Each appears plausible at first glance, but none withstands constitutional scrutiny.

7.2. Objection 1: "Article 35A Protected Regional Identity and Cultural Autonomy"

7.2.1. One common argument is that Article 35A was necessary to protect Kashmir's regional identity and cultural autonomy, and that without such protections the State would have been demographically overwhelmed by outsiders. This argument conflates legitimate cultural preservation with the denial of fundamental rights.

7.2.2. Constitutional democracies routinely protect regional identity through language policy, cultural institutions, educational curricula, and the preservation of local customs. They do not do so by suspending equality before the law, eliminating judicial review, or

©author

creating hierarchies within citizenship. The Constitution itself provides models for this distinction.

7.2.3. Article 371A protects customary law and land rights in Nagaland without abolishing fundamental rights or court oversight. Quebec has preserved French language and culture within Canada without reducing Anglophones to second-class citizens. Protecting a community's identity is not constitutionally equivalent to denying rights to those who fall outside it. The key distinction is that protecting 'us' does not entail denying rights to 'them.'

7.3. Objection 2: "Federal Accommodation Justifies Differential Treatment"

7.3.1. A related defence invokes federal accommodation. India's federal structure permits diversity, it is argued, and Article 370 and Article 35A were legitimate accommodations reflecting Jammu and Kashmir's unique accession circumstances.

7.3.2. Federalism does allow variation in State policy, administrative structures, language promotion, and local governance. What it does not permit is the elimination of fundamental rights for citizens, the removal of judicial review, or discrimination on grounds expressly prohibited by the Constitution.

7.3.3. The Supreme Court has held in *Kesavananda Bharati* that federalism is part of the basic structure, but it has also held that fundamental rights and judicial review are equally non-negotiable. Where federal accommodation conflicts with individual constitutional rights, the latter must prevail.

7.3.4. This can be compared to the United States. The American states differ widely in law and policy, but all Americans enjoy equal constitutional protection under the Fourteenth Amendment, regardless of where they reside.

7.4. Objection 3: "Security Situation Required Special Provisions"

7.4.1. The security considerations are often cited as a further justification. Kashmir's security environment, shaped by Pakistan's claims, militancy, and border tensions, is said to have required special legal provisions.

7.4.2. The security concerns can justify the deployment of armed forces, enhanced surveillance in sensitive areas, temporary movement restrictions during emergencies, and preventive detention subject to judicial review under Article 22. They cannot justify the permanent denial of fundamental rights, the elimination of judicial oversight, hereditary legal disabilities, or gender-based discrimination in citizenship.

7.4.3. The Article 35A did not address security at all. It regulated property ownership, employment eligibility, political participation, and settlement. Denying migrants from West Pakistan the right to own property did not enhance security. Forcing Valmikis into hereditary sanitation work did not address militancy. If security were the true concern, it is impossible to explain why Article 35A discriminated on grounds of marriage, religion, caste, and birth. The argument therefore fails the standard of non-arbitrariness embedded in Article 14, including the Wednesbury principle.

7.5. Objection 4: "Accession Agreement Mandated Special Status"

7.5.1. This argument rests on the Instrument of Accession and the negotiations surrounding it. According to this view, India was legally bound to provide special constitutional treatment to Jammu and Kashmir.

©author

7.5.2. The historical record does not support this claim. The Instrument of Accession covered only defence, external affairs, and communications. It did not require the elimination of judicial review, the denial of fundamental rights, or restrictions on property, employment, or settlement. While Article 370(1)(b), which limited Parliament's jurisdiction, may be consistent with accession terms, Article 35A was not.

7.5.3. The temporal sequence is also revealing. The Instrument of Accession was signed on 26 October 1947. The Constitution came into force on 26 January 1950. Article 35A was inserted only on 14 May 1954. If such a provision were mandated by accession, there is no explanation for its absence from the original Constitution. Even if accession negotiations had contemplated special arrangements, they could not authorize provisions that violate basic constitutional principles or the basic structure doctrine, as recognised after 1973.

7.6. Objection 5: Parliamentary Acquiescence

7.6.1. Parliamentary acquiescence is sometimes invoked as validation. Article 35A, it is said, stood unchallenged for decades and was accepted by successive governments. Parliamentary silence, however, does not cure constitutional invalidity.

7.6.2. In *Minerva Mills*, the Supreme Court struck down parts of the Forty-Second Amendment despite their having been enacted through the proper constitutional procedure. If even formally enacted amendments can be invalid, executive orders cannot be legitimised by inaction alone.

7.6.3. This argument fails even more decisively in light of systematic concealment. Article 35A was not taught in law schools, did not appear in standard constitutional law textbooks, and was not judicially examined until roughly 2014. Meaningful acquiescence is impossible where the existence and effect of a provision are not widely known. Political reluctance to "touch Kashmir" may explain silence, but it cannot convert illegality into legality. Nor could Parliament, even if it had acted expressly, validate violations of the basic structure.

7.7. Objection 6: "The Paper Overstates Causal Connection to Ethnic Cleansing"

7.7.1. It is also argued that the paper overstates the causal connection between Article 35A and the ethnic cleansing of 1989–90. The violence, critics say, resulted from multiple factors, including militancy, Pakistan's role, global radicalisation, and regional geopolitics.

7.7.2. The paper does not deny this complexity. It does not claim Article 35A was the sole cause. The claim is that it was a necessary enabling condition. For thirty-five years, the provisioon created a constitutional framework that marked Hindu minorities as outsiders without full rights.

7.7.3. It removed judicial remedies that might have protected victims, constrained central intervention through Article 370, and left no legal framework for protecting property or ensuring restitution. The counterfactual is instructive. Without Article 35A, victims would have had access to courts, the Supreme Court could have intervened on fundamental rights grounds, central authority would have been clearer, and property seizures would have been unequivocally illegal. Article 35A did not cause violence, but it dismantled the constitutional safeguards that could have limited or remedied it.

7.8. Objection 7: "Void ab Initio is Too Extreme"

7.8.1. Finally, declaring Article 35A void ab initio, it is argued, would create legal chaos by unsettling decades of actions and transactions. Courts, it is said, prefer stability. It is criticised as too extreme.

©author

7.8.2. The objective of stability does not override constitutional limits. Acts performed without constitutional authority do not become valid merely through the passage of time. Courts have long distinguished between invalidity in principle and the crafting of practical remedies. Through doctrines such as prospective application, severability, and saving clauses, courts routinely invalidate unconstitutional provisions without undoing every past consequence.

7.8.3. The alternative position is untenable. Treating longevity or concealment as curing constitutional defects would legitimise unconstitutional action and ignore institutional accountability. Article 35A is void from inception for the multiple reasons set out in this paper. Recognition of this invalidity does not require undoing all past consequences. Courts can, and routinely do, manage effects through doctrines such as prospective application and saving of transactions.

7.9. Misplaced Priorities:

7.9.1. The objections share a common flaw. They prioritize collective interests (regional identity, federal accommodation, security, political convenience) over individual fundamental rights. The constitutional hierarchy is as follows:

7.9.1.1. Individual fundamental rights (Articles 14, 19, 21)
7.9.1.2. Judicial review (basic structure)
7.9.1.3. Rule of law (basic structure)
7.9.1.4. Federal arrangements, regional identity, political accommodation

7.9.2. This hierarchy cannot be inverted. Democratic constitutionalism means individual rights prevail over collective convenience. The autocratic Ottoman Empire recognized this by 1839. India took longer i.e. until 2019.

8. Constitutional Provisions (Full Text)

Article 14 – Equality before law

> *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

> **(1)** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
>
> **(2)** No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
>
> (a) access to shops, public restaurants, hotels and places of public entertainment; or
> (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
>
> **(3)** Nothing in this article shall prevent the State from making any special provision for women and children.
>
> **(4)** Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and

©author

educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

Explanation—For the purposes of this article and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

Article 21 – Protection of life and personal liberty

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 35A (as inserted)

"Saving of laws with respect to permanent residents and their rights.—Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State—

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—
(i) employment under the State Government;
(ii) acquisition of immovable property in the State;
(iii) settlement in the State; or
(iv) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."

Article 368(2) – Amendment Procedure

"An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of

©author

not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill."

Article 370 – Temporary provisions with respect to the State of Jammu and Kashmir

(1) Notwithstanding anything in this Constitution,—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

©author

9. Basic Structure Doctrine

9.1. The Basic Structure Doctrine was articulated by the Supreme Court in *Kesavananda Bharati v. State of Kerala*, where a challenge was mounted to the 24th, 25th, and 29th Constitutional Amendments concerning property rights. While the Court rejected the specific challenge, it decisively held that Parliament's amending power under Article 368 is not absolute. Parliament cannot alter or destroy the Constitution's basic structure or essential features, which preserve its identity and continuity. Though rendered by a narrow majority, the doctrine has been consistently reaffirmed and now constitutes settled constitutional law.

9.2. In *Kesavananda Bharati*, the Court identified certain foundational features of the Constitution that lie beyond the reach of constituent power. These included:

9.2.1. Supremacy of the Constitution
9.2.2. Republican and democratic form of government
9.2.3. Secular character of the Constitution
9.2.4. Separation of powers
9.2.5. Federal character

9.3. These features were recognised as structural limitations on Parliament's power to amend the Constitution under Article 368.

9.4. The scope of basic structure review was also clarified in *Waman Rao v. Union of India*, where the Court held that all constitutional amendments enacted after 24 April 1973 are subject to basic structure scrutiny.

9.5. Subsequent decisions of the Supreme Court clarified and expanded the scope of the basic structure doctrine. In *Indira Nehru Gandhi v. Raj Narain*, the Court held that *judicial review* and the *rule of law* are integral components of the basic structure. The Court struck down a constitutional amendment that sought to place the election of the Prime Minister beyond judicial scrutiny, holding that no authority under the Constitution can be placed above the law or beyond judicial review.

9.6. The doctrine was further consolidated in *Minerva Mills.* The Court reaffirmed that Parliament possesses only a *limited amending power*, and that judicial review is an essential feature of the Constitution. Crucially, the Court emphasised that the various elements of the basic structure are not ends in themselves but exist to preserve the *dignity and freedom of the individual*, which constitute the normative foundation of the constitutional order.

9.7. Although the *Maneka Gandhi* case was not a basic structure case, it decisively expanded the substantive content of liberty under Article 21, grounding constitutional interpretation in fairness, reasonableness, and human dignity. This rights-based understanding directly informed later basic structure jurisprudence, particularly in *Minerva Mills*, where the Court linked institutional limitations on power to the protection of individual dignity.

9.8. The continued vitality of the basic structure doctrine has been emphatically reaffirmed in recent constitutional adjudication. In *the NJAC case*, the Court struck down the 99th Constitutional Amendment and the National Judicial Appointments Commission Act. It was held that judicial independence and judicial review form part of the basic structure and cannot be displaced even by a near-unanimous constitutional amendment.

9.9. In a case decided by a *Seven-Judge Bench*, it has also been held that it is only an amendment of the Constitution that can be challenged on the ground that it violates the

©author

basic structure of the Constitution. A statute cannot be challenged on the ground that it violates the basic structure of the Constitution. The only exception to this perhaps could be a statute placed in the Ninth Schedule of the Constitution.

9.10. The principles for challenging the constitutionality of a statute are quite different. This has been clarified by the Supreme Court in *Madarsa case*. The Court reiterated that State action must conform to the foundational values of secularism, equality, and human dignity, reaffirming that constitutional power, legislative or executive, cannot be exercised in a manner that undermines these core principles. However, the Court also held that judicial review of a legislation which was not a Constitutional Amendment was not permissible on alleged violation of Basic Structure Doctrine or the principle of Secularism. It also held that in a challenge to the validity of a statute for violation of the principle of secularism, it must be shown that the statute violates provisions of the Constitution pertaining to secularism.

9.11. The Article 35A was inserted in 1954 as part of Constitution itself. It was no ordinary legislation but an amendment of the Constitution itself. It continued to operate long after the doctrine crystallised. From 1973 onward, its discrimination and denial of judicial review stood in direct conflict with settled constitutional law and the Basic Structure of the Constitution.

9.12. In *Indira Nehru Gandhi* the Court also explained the powers of Parliament. It clarified that the power of a plenary body is not to be construed like the power of a delegate. The largest kind of power will be attributed to Legislature. The only prohibition is with reference to the provisions of the Constitution. The Constitution is the conclusive instrument by which powers are affirmatively created or negatively restricted.

9.13. It is equally well settled that the basic structure doctrine operates as a limitation on *constituent power* under Article 368, and does not apply directly to ordinary legislation. As stated in *Kesavananda Bharati,* the Constitutional structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

9.14. Therefore, the executive power, being hierarchically subordinate, cannot transgress limits that bind even the sovereign authority of Legislature. What Parliament cannot constitutionally achieve through amendment, the Executive cannot accomplish indirectly through executive order or subordinate constitutional mechanisms.

9.15. Thus, the Article 35A exemplifies precisely the constitutional distortion the basic structure doctrine was evolved to prevent. It entrenched unequal civic status, denied dignity and freedom to a class of citizens, and placed those denials beyond judicial correction. Whether examined through the hierarchy of constitutional powers or through the doctrine's normative commitment to human dignity, Article 35A cannot be reconciled with the basic structure of the Constitution.

10. Power to Amend the Constitution and Colourable Legislation

10.1. Article 368 of the Indian Constitution is the specific provision that grants Parliament the power to amend the Constitution. The procedure laid down in Article 368 is strictly binding. Parliament cannot bypass this process or use ordinary legislative power to achieve what requires a constitutional amendment. Article 368 deals with three types of Amendments:

©author

Type of Amendment	Scope	Requirements
Simple Majority	Admission of new states, changing state names/boundaries, etc.	Majority of those present and voting (like an ordinary law).
Special Majority (Art 368)	Fundamental Rights, Directive Principles, and most other provisions.	1. Majority of the total membership of each House. 2. **2/3rd majority** of those present and voting.
Special Majority + State Ratification (Art 368)	Federal features (e.g., Election of President, Supreme Court, Seventh Schedule).	Special Majority (as above) **PLUS** ratification by at least **half of the State Legislatures**.

10.2. In *Shankari Prasad (1951),* the petitioners argued that Article 368 was a "complete code" in itself, meaning the procedure laid down (introduction of a bill, passing by majority, etc.) was the *only* procedure to amend the Constitution. They used this to argue that the Bill could not be amended *during* its passage because Article 368 didn't explicitly say "amendments to the bill are allowed. Sastri J. rejected this narrow view, holding that while Article 368 provides the procedure, the normal legislative process (including amending a bill during debate) still applies. In this case the Court also opined that the power to amend the Constitution was explicitly conferred on Parliament by Article 368 and the requirement of a different majority was merely procedural.

10.3. The plenary power of the Parliament was again affirmed by the Supreme Court in *Sajjan Singh* even though the question was not debated before the Court and there appears to be doubt in some of the members of the Bench. It has been explained in the discussion in *Kesavananda Bharati*.

10.4. In *Golaknath* case the Supreme Court was deeply divided over the source of power of the Parliament to amend the Constitution and this almost created a constitutional crises which was resolved by amendment of article 368 itself by 24th Constitutional Amendment Act of 1971.

10.5. In *Kesavananda Bharati*, the 24th Constitutional Amendment Act was upheld and *Golaknath* was overruled. It further held, for the sake of brevity, that Article 368 contained both the power and procedure to amend the Constitution. The Court emphasised the distinction between the ordinary legislative power and the "Constituent Power" to amend the Constitution.

10.6. Therefore, Article 368 remains the *exclusive code* for substantive constitutional alteration. Any attempt by the Executive to bypass the special majorities of Article 368 via a Presidential Order constitutes an unconstitutional usurpation of constituent power. A provision that amputates Fundamental Rights and judicial review could only be introduced through Article 368.

10.7. The Article 35A was introduced from the back door of a Presidential order C.O. 48 of 1954 passed under article 370. It amended the Constitution in a way that even Parliament could not amend.

©author

10.8. As held in *Bommai*, if the power is used for an "oblique purpose" or is based on irrelevant grounds, it can be struck down. This makes the Presidential Order C.O. 48 of 1954, a Colourable Exercise of Power. This makes the Article 35A an unconstitutional rather non est provision from inception.

10.9. A "colorable" act is one that appears to be valid and within power on the surface (the "color"), but in reality, it targets a subject that the body is prohibited from touching. It is also often called a "fraud on Constitution."

10.10. The Latin maxim at the heart of Doctrine of Colourable Legislation is:

> *"Quando aliquid prohibetur ex directo, prohibetur et per obliquum"* (What cannot be done directly, cannot be done indirectly).

10.11. It is a case of colourable legislation when the legislature *intentionally disguises* a law to bypass a specific constitutional prohibition or lack of power, as has happened in the case of Article 35A of the Constitution.

11. Arbitrary Destruction of Part III of the Constitution

11.1. After *Maneka Gandhi*, any constitutional change that nullifies Part III protections is not permissible. Thus, post-1978, Article 35A's continued operation became unconstitutional on additional count of arbitrariness. Article 35A destroyed the following:

- Due process
- Reasonableness
- Non-arbitrariness
- Human dignity

11.2. *The Ninth Schedule Case* dealt with the degree of protection offered by Article 31B to the legislation included in IXth Schedule of the Constitution and held that the laws placed in the Ninth Schedule do not enjoy "blanket immunity" from judicial review. If the direct impact of the law results in violation of Fundamental Rights (specifically Articles 14, 19, and 21) in a way that damages the Basic Structure of the Constitution, it can be struck down.

11.3. Thus, it is a settled precedent that no part of the Constitution is a *safe haven* from judicial scrutiny if the basic essence of the Constitution is being altered.

11.4. Yet for 70 years, Article 35A remained on the statute book even though it imposed restrictions on the following matters:

(i) employment under the State Government;
(ii) acquisition of immovable property in the State;
(iii) settlement in the State; or
(iv) right to scholarships and such other forms of aid as the State Government may provide,

11.5. All these restrictions go to the roots of Fundamental Rights in Articles 14 to 19 of the Constitution and therefore were amenable to judicial review and liable to be struck down as such. The *Maneka Gandhi* case laid down that denial of right of locomotion was a breach of Article 19. Here something much more valuable was infringed by Article 35A of the Constitution.

©author

12. Separation of Legislative and Executive Power

12.1. In India's *parliamentary system*, the Council of Ministers are also members of Parliament. This naturally creates a "fusion" of the executive and the legislature.

12.2. Thus, the Constitution of India does not adopt a rigid separation of powers in the classical sense. Nevertheless, it clearly demarcates the functional domains of the Legislature, the Executive, and the Judiciary.

12.3. In *Ram Jawaya Kapur v. State of Punjab*, the Court held that although India follows a parliamentary system, the Constitution sufficiently differentiates the functions of the three organs of the State to prevent concentration of power in any one authority.

12.4. The Court observed that the doctrine of separation of powers, though not embodied in absolute rigidity, is implicit in the constitutional scheme. Legislative power vests in Parliament and the State Legislatures; executive power is exercised by the President and the Council of Ministers; and judicial power is vested exclusively in the courts. Article 50 of the Constitution, which mandates separation of the judiciary from the executive, reinforces this structural principle.

12.5. The limited separation of powers of the Legislature from the Executive is necessary to maintain accountability. If not, it adversely affects the Legislature's primary job which is to hold the Executive accountable through questions, debates, and no-confidence motions. Merger with the executive vanishes the oversight.

12.6. Thus, the significance of this functional separation lies in preserving constitutional accountability. Each organ must operate within the limits assigned to it by the Constitution. The Executive cannot assume legislative or constituent functions, just as the Legislature cannot encroach upon judicial authority. Constitutional amendment, in particular, is not an executive function but a constituent power expressly vested in Parliament under Article 368, subject to defined procedural and substantive limitations.

12.7. In *Kesavanand Bharati* Separation of power between the Legislature, the executive, and the judiciary is held to be part of the Basic Structure of Constitution. Modification of the Constitution in its application on any part of India, is a legislative power. Tested on the anvil of *Kesavanand Bharati*, Article 370 vesting the power of legislation in the President of India, therefore violates the Basic Structure of Constitution.

12.8. The importance of maintaining separation between constitutional functions was reiterated in *Supreme Court Advocates-on-Record Association v. Union of India*, where the Court held that separation of powers and judicial independence form part of the basic structure of the Constitution. Any action that undermines this separation strikes at the core of constitutional governance.

12.9. The following table provides the extent of exercise of legislative power exercised by the executive:

Type of Power	Permissibility	Limitations
Ordinance Making (Art 123/213)	**Permissible**	Temporary; must be approved by Parliament/Assembly within 6 weeks of reassembly.
Delegated Legislation	**Permissible**	The Executive can make "Rules," but only within the framework of a law passed by the Legislature.
Substantive	**NOT**	The Executive cannot use a Presidential Order to

©author

Type of Power	Permissibility	Limitations
Amendment	**Permissible**	change the "identity" or "Basic Structure" of the Constitution.

12.10. Permitting the Executive, acting through the President, to introduce substantive constitutional changes through a Presidential Order collapses this carefully maintained separation. The insertion of Article 35A through a Presidential Order amounted to the Executive exercising a power that constitutionally belongs to Parliament acting in its constituent capacity. Such an arrangement distorts the constitutional balance by allowing the Executive to perform a function it is expressly not authorised to undertake.

12.11. A provision that alters the balance between the Legislature, the Executive, and the Judiciary cannot be introduced through executive fiat. Article 370 which is the source of such power therefore constitutes a structural violation of the Constitution, independent of its substantive impact on fundamental rights.

13. Necessity of Reading Down

13.1. It is settled constitutional doctrine that where a constitutional or statutory provision is framed in broad terms capable of both constitutional and unconstitutional application, courts must prefer an interpretation that preserves constitutional validity. This technique of “reading down” is not a discretionary indulgence but a constitutional obligation, rooted in the presumption that constitutional authorities do not intend to transgress constitutional limits.

13.2. The doctrine applies with particular force where a provision confers *legislative or executive power in general terms*, but an unrestricted construction would permit encroachment upon fundamental rights, federal balance, or the basic structure of the Constitution.

13.3. As early as *R.M.D. Chamarbaugwala v. Union of India*, the Supreme Court held that when a provision is susceptible of two interpretations, one within constitutional limits and the other beyond, the Court must adopt the former. The Court expressly rejected constructions that would render a constitutional provision destructive of guaranteed freedoms, emphasising that constitutional powers are not to be read as self-subverting.

13.4. The principle was authoritatively applied to ***legislative entries and constitutional powers*** in *Keshavlal Khemchand v. Union of India*, where the Court held that entries in the Seventh Schedule, though expressed in broad language, must be construed harmoniously with fundamental rights and structural limitations. Legislative competence cannot be expanded by interpretation so as to nullify constitutional guarantees.

13.5. In *State of West Bengal v. Union of India*, the Supreme Court rejected an interpretation of constitutional power that would allow one constitutional authority to annihilate another. The Court held that even plenary constitutional powers must be read subject to implied structural limitations arising from federalism and constitutional design.

13.6. The same approach was reiterated in *Minerva Mills Ltd. v. Union of India*, where the Court held that constitutional provisions must be interpreted as part of an integrated whole. No provision, howsoever broadly worded, can be construed to destroy other essential constitutional features. Harmonious construction is not optional; it is inherent in constitutional interpretation.

©author

13.7. This interpretive discipline was reaffirmed in the context of executive power in *S.R. Bommai v. Union of India*. The Court held that constitutional powers conferred in wide terms cannot be exercised so as to produce consequences that subvert federalism, democracy, or judicial review. Where such consequences follow, the power must be read narrowly, and its exercise subjected to strict constitutional scrutiny.

13.8. These principles apply with equal, if not greater, force to Article 370(1)(d). If construed literally and without limitation, Article 370(1)(d) would permit the Executive, through Presidential Orders, to modify or introduce constitutional provisions in a manner that bypasses Article 368, alters the federal balance, and destroys fundamental rights. Such a construction would render Article 368 largely redundant and collapse the distinction between constituent power and executive power.

13.9. Article 370(1)(d), therefore, must be read down to permit only *operational, transitional, and application-related modifications*, and not substantive constitutional amendments. It cannot be interpreted as a parallel or alternative amendment mechanism. Any broader construction would be unconstitutional and destructive of the constitutional scheme.

13.10. Read in this manner, Article 370(1)(d) remains within constitutional bounds. Read otherwise, it authorises precisely what the Constitution forbids i.e. constitutional change without constituent procedure. The doctrine of reading down thus supplies an independent and sufficient ground to invalidate the insertion of Article 35A through Presidential Order C.O. 48.

13.11. The principle of harmonious construction was reaffirmed in *Indra Sawhney v. Union of India*, where the Court held that constitutional provisions must be interpreted as part of an integrated constitutional scheme, and that no provision can be construed so broadly as to destroy the limitations imposed by another. An interpretation that renders a constitutional safeguard otiose is impermissible. Applied to the present context, Article 370(1)(d) cannot be read in a manner that neutralises Article 368 or permits constitutional amendment through executive action.

14. Ejusdem Generis Canon of Construction

14.1. It is a settled principle of interpretation that where general words follow specific words in a statutory or constitutional provision, the general words are construed as limited to things of the same kind as those specifically enumerated. This canon, commonly described as *ejusdem generis*, is applied to prevent the use of general language from expanding a provision beyond its intended scope.

14.2. The doctrine is not a rigid formula but a rule of constitutional discipline. Its purpose is to ensure that broadly worded clauses are not interpreted in a manner that defeats the scheme, context, or underlying limitations of the provision in which they appear. This principle applies with particular force in constitutional interpretation, where an expansive reading of general words may otherwise result in the displacement of carefully structured constitutional safeguards.

14.3. Article 370 must be interpreted in light of its historical context and constitutional purpose.

©author

15. Malice in Law and Constitutional Morality

15.1. In constitutional adjudication, the validity of a law or executive action does not depend solely on the intention the authority. Where a legal provision produces consequences that are unjust, exclusionary, or destructive of constitutional guarantees, the law is vitiated irrespective of motive. This principle is well settled in Indian public law and is described as *malice in law*. It is a situation where power is exercised for an unauthorised purpose or yields results wholly alien to constitutional norms.

15.2. Malice in law does not require the person to have a bad motive, ill-will, or any personal grudge. If an authority intentionally does something that the law forbids, or use a legal power for a purpose it wasn't intended for, it has committed "malice in law" even if it thought that it was doing the right thing. This is the legal maxim behind the doctrine:

> A person who inflicts an injury upon another in contravention of the law is not allowed to say that he did so with an innocent mind.

15.3. It is important to distinguish *malice in law* from *malice in fact*. The former concerns the *legality of the act*, while the latter concerns the *motive of the actor*. Following table explains the difference:

Feature	Malice in Law (Legal Malice)	Malice in Fact (Actual Malice)
Focus	The act and its legal effect	The mental state or motive
Requirement	Use of power for an unauthorised purpose	Spite, ill-will, or animus i.e. a desire for revenge.
Proof	Inferred from the illegality of the act or its result	Requires evidence of intent
Typical Context	Administrative Law, Abuse of Power.	Defamation, Malicious Prosecution, Torts.

15.4. The principle underlying *malice in law* has deep roots in the common law. In *Ashby v. White* (1703), the English courts held that the wrongful denial of a legal right constitutes actionable injury even where no consequential damage can be shown. A returning officer who refused a qualified voter the right to vote was held liable, notwithstanding that the candidate the voter supported was ultimately elected. The case established that the infringement of a legal right itself is a cognisable injury, and that motive or outcome is irrelevant. This principle directly applies to Article 35A, which denied constitutional rights to a class of citizens as a matter of legal status and simultaneously foreclosed remedies. The constitutional injury lay in the denial itself, irrespective of individual loss or subsequent events.

15.5. The doctrine has been authoritatively explained by the Supreme Court in *S.R. Venkataraman v. Union of India*, where the Court held that if a public authority acts on non-existent facts or for a purpose not contemplated by the statute or the Constitution, the action is vitiated by *malice in law*. The Court made it clear that even in the absence of personal malice, an order passed for an unauthorised purpose is legally malicious. This principle has been consistently followed, including in *Punjab State Electricity Board v. Zora Singh*.

15.6. Jurisprudentially, principle of *Malice in Law* corresponds to what Lon L. Fuller described as the “morality of law”. Fuller identified minimum conditions necessary for a norm to qualify as law, including publicity, clarity, consistency, and congruence between declared law and official action. Persistent failure on these parameters does not merely

©author

indicate poor drafting; it undermines the legitimacy of the legal order itself. In constitutional systems governed by the rule of law, such failures translate into arbitrariness and abuse of power.

15.7. The Presidential Order inserting Article 35A fails these minimum standards in a manner that is neither incidental nor marginal. The Presidential Order was passed without parliamentary debate, remained absent from standard constitutional texts for decades, and was largely excluded from legal education and judicial discourse. It was not even available in library of Parliament, what to speak of tabling it before the Parliament. A constitutional provision that is formally operative yet functionally invisible fails the requirement of publicity and transparency that underpins lawful governance.

15.8. The absence of publicity directly impairment of clarity is intriguing. Citizens affected by Article 35A were denied knowledge of the legal basis on which their rights were curtailed, and legal remedies were foreclosed without meaningful notice. A constitutional norm that governs civil status, property, employment, and political participation, yet remains opaque to those governed by it, cannot satisfy the requirement of intelligibility inherent in the rule of law.

15.9. Article 35A also created a direct and irreconcilable inconsistency within the Constitution. While Part III guarantees equality, liberty, and access to justice, Article 35A authorised the denial of those guarantees to a class of Indian citizens and placed such denial beyond judicial scrutiny. The arrangement did not balance competing constitutional values; it nullified one set of constitutional guarantees in favour of exclusions for which no coherent constitutional objective was articulated.

15.10. The effect of this framework was not neutral. It systematically excluded non-permanent residents who were overwhelmingly non-Muslims and citizens from outside the State, from property rights, public employment, political participation, and legal remedies. No coherent constitutional objective was ever articulated to justify these outcomes. Where the effect of a law is persistent discrimination without rational nexus to a legitimate purpose, the absence of motive becomes irrelevant. The law is vitiated by **malice in law**.

15.11. This conclusion is reinforced by the Supreme Court's own observations while upholding the abrogation of Article 35A. Justice Kaul, speaking in that specific context, observed:

> Taking a leaf out of South Africa's book, the principles of "ubuntu", or the art of humanity, and inclusiveness should be central to the process. This will facilitate a reparative approach that enables forgiveness for the wounds of the past, and forms the basis of achieving a shared national identity. Needless to say, the Commission is only one of the many avenues towards the goal of systemic reform.

15.12. These observations were not abstract reflections on constitutional values, but acknowledgements of the lived consequences of the legal regime sustained by Article 35A. It was judicial contriteness expressed in legal articulation. Read in context, it is the judicial recognition that the prior arrangement inflicted constitutional injury.

15.13. In Indian constitutional law, unjust outcomes are not neutral facts. When a law or constitutional provision consistently produces exclusion, indignity, and denial of rights, and when those consequences are structurally insulated from correction, the law ceases to be a legitimate exercise of power. The doctrine of malice in law treats such outcomes as constitutionally fatal, irrespective of the form in which the power was exercised.

©author

15.14. Article 35A thus stands condemned not merely on procedural or structural grounds, but on a deeper constitutional basis. It lacked a legitimate constitutional object, produced manifestly unjust and discriminatory outcomes, and was shielded from judicial correction. These features, taken together, establish that Article 35A was not merely unconstitutional in form, but *illegitimate in substance*. It was a classic case of *malice in law* incompatible with constitutional morality and the rule of law.

15.15. Constitutional morality, in this context, is not an abstract ethical aspiration. It is the legal standard by which power is judged. A provision entrenches exclusion, and denies dignity to a class of citizens cannot be reconciled with a constitutional order founded on the rule of law.

16. Fundamental Rights under Article 14

16.1. Article 14 of the Constitution does not merely prohibit formal inequality; it also embodies the doctrine of non-arbitrariness, which lies at the core of the guarantee of equality before law.

16.2. Standards of reasonableness developed in administrative law, including the *Wednesbury* principle, inform and are subsumed within Article 14's equality guarantee, since arbitrariness is constitutionally recognised as the antithesis of equality.

16.3. Since *E.P. Royappa* and as consistently reaffirmed in *Maneka Gandhi* and subsequent decisions, arbitrariness has been held to be violative of Article 14. The Supreme Court has further clarified that legislation or executive action which is capricious, irrational, or bears no reasonable nexus to its stated objective is liable to be struck down as *manifestly arbitrary.*

16.4. Where a constitutional provision or executive order discriminates without a rational connection to its purported purpose, Article 14 stands violated irrespective of intent.

16.5. Tested on this settled standard, Article 35A is manifestly arbitrary. It did not identify any legitimate constitutional objective capable of justifying the wholesale exclusion of a class of Indian citizens from equality, liberty, and judicial protection. The classifications it authorised were based on permanent resident status which bore no rational nexus to any stated purpose grounded in security, federalism, or cultural preservation. Instead, Article 35A insulated discrimination itself from scrutiny by excluding the application of Article 14. A constitutional provision that both creates discrimination and forecloses review of that discrimination is arbitrary by design and violates the core guarantee of equality under Article 14 irrespective of motive or form.

17. Personal Liberty under Article 22:

17.1. Article 22 itself was a product of the Constituent Assembly's uneasy inheritance of colonial preventive detention laws such as the Rowlatt Act, and was intended as a narrowly confined exception, not a territorially entrenched regime of diminished liberty. Under *A.K. Gopalan v. State of Madras* (1950), Articles 14, 19, and 21 were read disjunctively, and preventive detention was largely insulated so long as Article 22's procedural minima were formally complied with. In Jammu & Kashmir, preventive detention laws operated in an even more restrictive constitutional environment.

17.2. Article 35A insulated detention law of the State from Article 14 scrutiny, which meant that arbitrariness, discrimination, and unequal application of detention laws could not be

©author

tested. The J&K preventive detention regime (later PSA) lacked the substantive and procedural protections that evolved elsewhere after *Maneka Gandhi*.

17.3. Thus, Article 35A froze J&K preventive detention law in a *pre-Maneka Gandhi* constitutional posture, while the rest of India was governed by evolved constitutional protections under Article 14, 21 and 22 of the Constitution.

17.4. The coercive character of this preventive detention regime was not limited to political minorities or marginal groups. The principal architects of this State, including Sheikh Abdullah himself, spent prolonged periods in detention under the same legal framework, underscoring the absence of meaningful constitutional restraint.

17.5. Article 22 is not a self-contained exception to constitutionalism. It operates within the broader guarantees of equality and personal liberty. After *Maneka Gandhi*, preventive detention laws became subject to substantive standards of fairness, reasonableness, and non-arbitrariness. By insulating State detention laws from Article 14 scrutiny and denying access to evolved constitutional standards, Article 35A entrenched a territorially segregated regime of personal liberty. A constitutional arrangement that permanently subjects one class of citizens to inferior protections against detention is incompatible with Articles 14, 21, and 22 read together, and violates the basic guarantee of equal personal liberty under the Constitution.

18. Ethnic Cleansing

18.1. The United Nations Commission of Experts, established pursuant to Security Council Resolution 780 (1994), defined ethnic cleansing as:

> "A purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas."

18.2. This definition comprises three elements:

18.2.1. The objective of rendering an area ethnically homogeneous;
18.2.2. The use of force or intimidation; and
18.2.3. The removal of persons of a targeted group from a defined geographic area.

18.3. Each of these elements was present in the Kashmir Valley during 1989–90. There was a demonstrable intent to remove the Hindu population. Violence and terror were employed through targeted killings, threats, and public announcements. The result was the near-total removal of Hindus from the Valley, reducing their population from approximately five percent to less than 0.1 percent. The events of 1989–90 therefore satisfy the international-law definition of ethnic cleansing.

18.4. Having established this threshold, the constitutional question is not whether violence occurred, but how constitutional arrangements enabled its scale, permanence, and impunity.

18.5. Ethnic cleansing is rarely the product of a single cause. Comparative experience shows that it typically requires the convergence of pre-existing social tensions, a triggering crisis, mobilisation of a majority against a minority, institutional failure or complicity, and material incentives that make dispossession attractive. Article 35A did not generate militancy or external interference. Its role was different and more insidious. It structured the legal environment in which violence became socially permissible, institutionally unmanaged, and economically profitable.

©author

18.6. In plural societies, differences of religion, culture, and economic position inevitably generate tension. Article 35A transformed such difference into constitutional hierarchy. By formally distinguishing between “permanent residents” and other Indian citizens, it embedded a two-tier conception of belonging into ordinary governance for thirty-five years, from 1954 to 1989. Schools, public employment, courts, property transactions, and electoral processes all operated on this distinction. The effect was cumulative and normalising. Hindu minorities were not merely socially distinct; they were constitutionally marked as legally lesser.

18.7. When militancy emerged in 1989, supported by Pakistan and accompanied by arms, training, and ideological mobilisation, Article 35A did not cause it. What Article 35A supplied was a pre-existing legal vocabulary of exclusion. Decades of constitutional practice had already identified who fully belonged and who did not. Militant mobilisation did not need to invent categories of exclusion; it could invoke distinctions already validated by law. Violence could thus be framed not as rupture, but as enforcement of an established order.

18.8. Mobilisation requires more than grievance; it requires permission. Legal frameworks often supply that permission by signalling who lies outside the moral and political community. Historical experience illustrates this mechanism. In Nazi Germany, the Nuremberg Laws reclassified Jews as non-citizens years before mass violence began. In Rwanda, ethnic identity cards performed a similar function. In Kashmir, Article 35A played an analogous role over a longer period. For decades, it constitutionally peripheralised Hindu minorities, restricted their access to land and employment, and normalised unequal treatment. By 1989, the implicit logic was dangerous but simple: the Constitution itself said they did not fully belong.

18.9. The violence of 1989–90 was marked less by direct State action than by structural State failure. Article 35A contributed decisively to that failure. It placed discriminatory laws beyond judicial scrutiny, depriving victims of constitutional remedies at precisely the moment when protection was most needed. Simultaneously, Article 370 constrained central intervention, while local police and administrative institutions were drawn from the same social milieu as the perpetrators. Crimes were investigated by local authorities, prosecuted by State institutions, and adjudicated by courts whose jurisdiction over fundamental rights had already been curtailed. The result was not episodic neglect, but a constitutional vacuum in which accountability was structurally unavailable.

18.10. Material incentives compounded this failure. Hindu minorities in the Valley constituted a relatively prosperous, property-owning group. Residential and commercial properties, agricultural land, and businesses became available for seizure. Article 35A had already established that non-permanent residents should not own property. Once legal protection disappeared, the transition from “should not own” to “do not deserve to own” required little additional justification. Forced sales at nominal prices, presented as voluntary transactions, acquired a veneer of legality. Religious narratives intersected with material gain and legal impunity to create a powerful incentive structure for dispossession.

18.11. Several patterns support this causal account. Article 35A had been operative for thirty-five years before the ethnic cleansing occurred. Earlier crises, the Partition violence of 1947 and the wars of 1965 and 1971, did not produce a comparable outcome in the Valley. The delegitimisation of Hindu presence required prolonged legal normalisation before it translated into mass removal. Comparatively, other Indian States with deep religious diversity did not experience ethnic cleansing of minorities. Even within Jammu and Kashmir, the pattern diverged: Jammu, where Hindus were a majority, did not witness

©author

the cleansing of Muslims despite the same constitutional framework. What mattered was the interaction of Article 35A with minority status and militancy.

18.12. Patterns of property loss further distinguish organised dispossession from random unrest. Random violence produces uneven outcomes. What occurred instead was near-total loss of Hindu property through seizure or duress-driven sale. Geographic patterns reinforce this conclusion. Hindu families lived interspersed among Muslim neighbours, often as single households within predominantly Muslim localities. Overcoming decades of neighbourly coexistence required more than fear; it required a sustained legal and ideological framework that had already taught who truly belonged.

18.13. A counterfactual analysis sharpens the point. Without Article 35A, Hindu minorities would have enjoyed full fundamental-rights protection. Courts could have intervened. The Supreme Court could have acted on equality and liberty grounds. Central authority would have been clearer and property seizures would have been unambiguously illegal. Violence might still have occurred, given militancy and geopolitics, but it is far less likely that it would have taken the form of systematic ethnic cleansing accompanied by mass economic dispossession.

18.14. The standard of causation asserted here is neither determinism nor mere association. The claim is not that Article 35A was the sole cause of violence, but that it functioned as a necessary enabling condition. Without the constitutional framework it created, the scale, organisation, and impunity of the catastrophe would either not have occurred, would have been significantly constrained, or would have triggered immediate constitutional intervention. Article 35A did not directly cause violence; it dismantled the constitutional safeguards that made violence preventable and punishable, thereby making it possible and profitable.

18.15. The constitutional regime surrounding Article 35A enabled a prolonged process of cultural erosion in the Kashmir Valley. This erosion did not affect all social groups uniformly. Educated and economically secure families often retained fluency in Kashmiri and exposure to external institutions. Many travelled outside the Valley and owned property elsewhere in India. Such mobility allowed them to mitigate the effects of institutional insulation.

18.16. The greatest impact fell upon the ordinary, non-mobile population whose lives were embedded entirely within local systems. The displacement of Kashmiri by Urdu in schools disrupted intergenerational linguistic transmission. The destruction and prolonged absence of cinemas and cultural venues eliminated shared civic and narrative spaces. Public culture receded while private survival strategies replaced collective expression.

18.17. Culture survived within homes and among mobile classes, but withered in public institutions. This outcome reflects not social incapacity, but structural deprivation. The constitutional framework preserved formal identity while dismantling the mechanisms through which culture is lived and renewed. In this sense, the regime enabled cultural genocide. It did not erase a people, but systematically diminished cultural agency among the most vulnerable.

18.18. The events of 1989-90 remained largely absent from national consciousness for three decades. Two cinematic works brought renewed attention: 'The Kashmir Files' (2022) depicted the violence and exodus through survivor testimonies, while 'Article 370' (2024) examined the constitutional framework that enabled these events. The unprecedented public response to these films, including nationwide discussions and voluntary viewership campaigns, demonstrated that popular sentiment recognized the

©author

tragedy even where official discourse had remained silent. This cultural acknowledgment, emerging only after constitutional correction in 2019, underscores how Article 35A's concealment extended beyond legal texts to collective memory itself.

19. Void Ab Initio Legislation

19.1. Article 13(2) provides that laws contravening fundamental rights "shall be void." This is not a metaphorical declaration. The Constitution itself provides the doctrine of void in public law. A void law under Article 13 never acquires legal force. It confers no rights. It creates no obligations. It can be challenged whenever the question arises. The Supreme Court has consistently interpreted this voidness as void ab initio. It operates as constitutional nullity from inception.

19.2. In *Deep Chand v. State of Uttar Pradesh* (1959), the Court addressed this principle. A law violating constitutional limitations is void and unenforceable from inception. In *I.R. Coelho v. State of Tamil Nadu* (2007), the Court reaffirmed this position. Article 13 voidness operates as constitutional nullity, not merely as unenforceability. The text of the Constitution supplies the foundational principle. Unconstitutional law is void from the moment of its purported enactment.

19.3. Indian constitutional law recognizes a clear distinction. Acts may be voidable or void ab initio. Where an authority acts without constitutional competence, the resulting act is a nullity. In *A.R. Antulay v. R.S. Nayak* (1988), the Supreme Court held a crucial principle. Jurisdiction cannot be created by consent, waiver, or acquiescence. An order passed without jurisdiction remains void. This is true regardless of how long it operates. It is true regardless of how widely it is accepted. The Court made clear that constitutional illegality cannot be cured. Institutional silence or convenience provides no cure.

19.4. The principle was established earlier in *Kiran Singh v. Chaman Paswan* (1954). The Court held that jurisdictional defects strike at the very authority. Such defects render acts a nullity. Jurisdictional nullity means legal non-existence. Courts have repeatedly applied this doctrine in constitutional cases. Defects going to the root of authority cannot be validated. Subsequent events cannot validate them. Institutional acceptance cannot validate them.

19.5. In *State of Punjab v. Gurdev Singh* (1991), the Court distinguished categories. Void orders differ from voidable orders. The Court held that "a void order is a nullity." It is non-existent in the eye of law. Void orders do not require formal setting aside. Voidable orders must be challenged within limitation. This distinction is fundamental to understanding constitutional nullity.

19.6. The expression "non est" originates in private law. It appears particularly in the doctrine of *non est factum*. This Latin phrase means "it is not my deed." It is a defense in contract law. It allows escape from legal consequences of documents signed under fundamental mistake. Courts avoid Latin maxims in public law. However, the substance of the doctrine has been incorporated into constitutional jurisprudence. That substance is that certain acts are legally non-existent.

19.7. In *S.P. Chengalvaraya Naidu v. Jagannath*, Justice Kuldeep Singh adopted this language. The Court held that fraudulent judgments are "a nullity and non est." Such a decree can be challenged at any stage. It can be challenged in any proceeding. It can be challenged even collaterally. It need not be formally set aside before being ignored. The case arose in the context of fraud on the court. Yet the principle demonstrates judicial recognition. Foundational illegality renders an act legally non-existent. It does not merely make it voidable.

©author

19.8. This represents the etymological evolution of the concept. The concept moved from private law into constitutional law. The doctrine now stands independently on Article 13 and jurisdictional principles. But the *Chengalvaraya Naidu* formulation illustrates judicial understanding. Courts understand constitutional nullity as legal non-existence. Acts vitiated by foundational illegality acquire no legal existence. They create no enforceable rights.

19.9. This principle applies with greater force to exercises of constituent power. The power to amend the Constitution is exhaustively governed by Article 368. A provision introduced through a mechanism lacking constituent competence is void from inception. This follows from both Article 13 and jurisdictional principles. Parliamentary inaction cannot supply constitutional authority that never existed. Political acceptance cannot supply such authority either.

19.10. Presidential Order C.O. 48 of 1954 inserted Article 35A. It did not follow the procedure mandated by Article 368. The President possessed no constituent power to amend the Constitution. The defect goes to the root of authority. It does not go to the manner of exercise. Under Article 13, any instrument purporting to abridge fundamental rights requires constitutional authority. Without that authority, it is void. Under jurisdictional principles established in *Antulay* and *Kiran Singh*, acts beyond constitutional competence are nullities.

19.11. Article 35A was not merely irregular or voidable. It was constitutionally void ab initio on two independent grounds. First, it violated Article 13 by abridging fundamental rights without legislative authority. Second, it was issued without constituent competence under Article 368. Both defects strike at constitutional validity from inception.

19.12. The prolonged operation of Article 35A cannot validate it. Constitutional nullities do not mature into legality by efflux of time. This has been held consistently by the Supreme Court. In *Bhim Singh v. Union of India* (2010), the Court addressed Article 356. The Court reaffirmed that unconstitutional exercises of constitutional power do not gain legitimacy. Political acceptance does not confer legitimacy. Duration of operation does not confer legitimacy.

19.13. To hold otherwise would permit constitutional amendments through executive practice. This would undermine the supremacy of the Constitution itself. As the Court observed in *Antulay*, acquiescence cannot confer jurisdiction where none exists. Similarly, institutional silence cannot transform a constitutional nullity into valid law. The Constitution's supremacy depends on this principle. What is void remains void. This is true regardless of how long it operates unchallenged.

19.14. Article 35A stood void from its insertion in 1954. Its abrogation in 2019 merely formalized what constitutional law already recognized. An act without constitutional authority acquires no legal existence. It requires no validation doctrine to destroy it.

20. Comparison with Similar Discriminatory Regime

20.1. Ottoman Empire

20.2. The Ottoman millet system created religion-based hierarchies and legal privileges for Muslims over non-Muslims. Non-Muslims (dhimmis) faced poll taxes like jizya. There were restrictions on property and building heights. It had separate courts applying their own laws in inter-community disputes. Muslims constituted the ruling elite and enjoyed sharia-based primacy. It mirrored some of the features with the discriminatory special status

©author

granted to a specific group (Muslims in Jammu & Kashmir) under Article 35A of Constitution of India.

Reforms of 1839

20.3. The Hatt-ı Şerif explicitly addressed these millet-induced inequities by promising life/property security and legal equality for all subjects regardless of faith, dismantling religious hierarchies. The *Hatt-ı Şerif of Gülhane* (Imperial Edict of the Rose Chamber) was passed by Sultan Abdülmecid I on November 3, 1839. This was the beginning of Tanzimat or Reorganization Reforms. Key features of these reforms were:

20.3.1. Guaranteed security of life, honor, and property to all subjects regardless of religion
20.3.2. Abolished discriminatory jizya (poll tax on non-Muslims)
20.3.3. Promised equality before the law
20.3.4. Reformed legal system to reduce religious hierarchy

20.4. Thus, the Islamic empire acknowledged that hierarchical legal systems based on religious identity were unjust and required reform. It was 180 years before India addressed a similar situation by the abolition of Article 35A from Constitution in 2019.

20.5. German Legal Framework (1933-1945)

20.6. The Nuremberg Laws (1935) and subsequent legislation created a hierarchical racial classification system that stripped Jews and other "non-Aryans" of citizenship rights and legal protections. This was part of a broader genocidal project. The Law for the Protection of German Blood and Honor banned marriages and relations between Jews and those of "German or kindred blood". Subsequent decrees, like the November 14, 1935, regulation, defined Jews racially (e.g., three or four Jewish grandparents) and extended measures to Roma, Black people, and others as racial threats. These were the legal disabilities imposed on Jews:

20.6.1. Stripped of German citizenship (reduced to "subjects" without rights)
20.6.2. Prohibited from marrying or having sexual relations with "Aryans"
20.6.3. Excluded from professions, public service, and property ownership
20.6.4. Required to wear identifying badges
20.6.5. Eventually subjected to ghettoization, deportation, and systematic extermination

20.7. These laws institutionalized antisemitism by redefining Jews as an inferior race rather than a religious group, enabling job bans, property restrictions, and social exclusion that paved the way for the Holocaust. This system was explicitly designed for persecution and extermination. It represents state-organized genocide, fundamentally different in intent and outcome from administrative autonomy arrangements.

20.8. Article 35A's framework disadvantaged displaced Hindu/Sikh minorities by privileging pre-existing (Muslim-majority) residents. This discrimination was similar to Nuremberg's racial exclusion of Jews from citizenship. Thus, both enforced hierarchical legal barriers based on origin/identity, stripping rights from targeted groups within their regions.

Conclusion:

Universal Imperative Against Constitutional Apartheid.

This examination of Article 35A establishes not merely a constitutional violation within one nation, but a case study in how legal frameworks enable humanitarian catastrophes. The

©author

pattern is consistent across history. The Ottoman millet system required reform in 1839. The Nuremberg Laws led to genocide. Article 35A enabled ethnic cleansing in 1989-90.

The international community must recognize that constitutional provisions creating legal hierarchies among citizens based on religion, ethnicity, or origin are not matters of internal sovereignty but precursors to crimes against humanity. Where law denies equality, strips judicial protection, and marks populations as outsiders, violence becomes not aberration but enforcement.

No nation, no region, no population should endure what the legal regime of Article 35A inflicted upon religious minorities in Jammu and Kashmir. The constitutional frameworks that deny fundamental rights, eliminate judicial review, and create hereditary legal disabilities must be identified and dismantled before they enable the next catastrophe.

Constitutional governance requires constant vigilance. Legal provisions that create two-tier citizenship, however justified by history or security or identity, carry within them the seeds of exclusion that can grow into violence. The abrogation of Article 35A in 2019 came seven decades too late. The lesson for constitutional democracies worldwide is that such provisions must be challenged at inception, not after they have already enabled humanitarian tragedy.

.

Appendix:

Constitutional Cases:

1. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, https://indiankanoon.org/doc/257876/
2. *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; (1975) Supp SCC 1; (1976) 2 SCR 347, https://indiankanoon.org/doc/936707
3. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248
4. *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625
5. *Waman Rao v. Union of India*, (1981) 2 SCC 362
6. *Supreme Court Advocates-on-Record Association v. Union of India* (NJAC Case), (2016) 5 SCC 1
7. *Anjum Kadri v. Union of India* (Madarsa case), Supreme Court of India, https://api.sci.gov.in/supremecourt/2024/14432/14432_2024_1_1502_56834_Judgement_05-Nov-2024.pdf
8. *State of Karnataka v. Union of India*(Seven Judge Banch), (1977) 4 SCC 608
9. *I.R. Coelho v. State of Tamil Nadu* (Ninth Schedule Case), (2007) 2 SCC 1 : AIR 2007 SC 861, [https://main.sci.gov.in/judgment/judis/25574.pdf
10. *Shankari Prasad Singh Deo v. Union of India*, 1952 SCR 89
11. *State of Bihar v. Kameshwar Singh*, 1952 AIR 252, 1952 SCR 889
12. *K.C. Gajapati Narayan Deo v. State of Orissa*, 1953 1953 AIR 220, 1953 SCR 852

©author

13. *K.T. Moopil Nair v. State of Kerala*, 1961 1961 AIR 552, 1961 (3) SCR 77.
14. *Sajjan Singh v. State of Rajasthan*, [1965] 1 S.C.R. 933
15. *S.R. Bommai v. Union of India*, (1994) 3 SCC 1
16. *Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab*, AIR 1955 SC 549 : (1955) 2 SCR 22
17. *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441
18. *R.M.D. Chamarbaugwala v. Union of India*, AIR 1957 SC 628
19. *R.C. Cooper v. Union of India* (Bank Nationalisation Case), (1970) 1 SCC 248
20. *Keshavlal Khemchand v. Union of India*, AIR 1965 SC 1617
21. *State of West Bengal v. Union of India*, (1963) SCR 371
22. *Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255
23. *Indra Sawhney v. Union of India*, (1992) Supp (3) SCC 217
24. *State of Bombay v. Hospital Mazdoor Sabha*, (1960) 2 SCR 866
25. *Jage Ram v. State of Haryana*, (1971) 1 SCC 671
26. *Amar Chandra Chakraborty v. Collector of Excise*, (1972) 2 SCC 442
27. *Siddeshwari Cotton Mills v. Union of India*, (1989) 2 SCC 458
28. *Kavalappara Kottarathil Kochuni v. State of Madras*, AIR 1960 SC 1080
29. *S.R. Venkataraman v. Union of India*, (1979) 2 SCC 491
30. *Punjab State Electricity Board Ltd. v. Zora Singh*, (2006) 6 SCC 776
31. *Deep Chand v. State of Uttar Pradesh*, (1959) SCR 8: AIR 1959 SC 71
32. *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602
33. *Kiran Singh v. Chaman Paswan*, (1954) AIR 1954 SC 340: 1955 SCR 117
34. *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1
35. *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1
36. *Bhim Singh v. Union of India*, (2010) (2010) 5 SCC 538 : AIR 2010 SC 2862.
37. *Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth*, (1984) 4 SCC 27
38. *A.K. Gopalan v. State of Madras*, (1950) AIR 1950 SC 27 : 1950 SCR 88
39. *In Re: Article 370 of the Constitution*, Supreme Court of India, decided 11 December 2023, https://www.scobserver.in/wp-content/uploads/2023/07/Judgement-Abrogation-of-Article-370.pdf

English Cases:

©author

40. *Ashby v. White*, (1703) 92 ER 126 (King's Bench)

Books and Articles:

41. Bor, Y. (2025). Millet System in Ottoman Empire: An Extraordinary Policy with Extraordinary Implications, https://orcid.org/0000-0002-4391-8052
42. Implications of Article 35-A, Testbook IAS Preparation, https://testbook.com/ias-preparation/article-35a

Research Papers on Kashmiri Pandit Exodus:

43. The Exodus of Kashmiri Pandits and Its Impact (1989-2002), https://www.researchgate.net/publication/342701900_THE_EXODUS_OF_KASHMIRI_PANDITS_AND_ITS_IMPACT_1989-2002

44. Migration of Kashmiri Pandits: Kashmiriyat Challenged?, https://www.researchgate.net/publication/397662845_Migration_of_Kashmiri_Pandits_Kashmiriyat_Challenged

45. Powerful Pawns of the Kashmir Conflict: Kashmiri Pandit Migrants, https://www.researchgate.net/publication/273339244_Powerful_Pawns_of_the_Kashmir_Conflict_Kashmiri_Pandit_Migrants

46. Reinventing Agency, Sacred Geography and Community Formation: The Case of Displaced Kashmiri Pandits in India, https://www.researchgate.net/publication/283656084_Reinventing_Agency_Sacred_Geography_and_Community_Formation_The_Case_of_Displaced_Kashmiri_Pandits_in_India

47. Property Rights of Kashmiri Pandits by Niketa Singh https://researchinginternaldisplacement.org/wp-content/uploads/2021/12/RID-WP13_Niketa-Singh_Kashmiri-Pandits_Dec-2021.pdf
News Articles:

48. Red Carpet to Rohingya intruders, Indian Express, https://indianexpress.com/article/legal-news/do-we-give-them-a-red-carpet-welcome-supreme-court-on-plea-on-custodial-disappearance-illegal-deportation-of-rohingyas-10397846/

Displacement Numbers (Multiple Estimates):

- Government of India: ~62,000 families registered
- Kashmiri Pandit organizations: 250,000-350,000 individuals
- Academic estimates: 150,000-300,000

Key Dates:

Event	Date	Source to Check
Instrument of Accession	Oct 26, 1947	Standard historical record
Constitution adopted	Jan 26, 1950	Official date
Presidential Order C.O. 48	May 14, 1954	Government Gazette 1954
Article 35A effective date	May 14, 1954	Same as above

©author

Event	Date	Source to Check
Kesavananda Bharati decided	Apr 24, 1973	(1973) 4 SCC 225
Settlement Act (W. Pak migrants)	1982	J&K Legislative records
Kashmiri Pandit exodus begins	Jan 19, 1990	Historical accounts
Susheela Sawhney case	Oct 7, 2002	2002 J&K HC decision
Article 370 abrogated	Aug 5, 2019	Constitution (Application to J&K) Order, 2019
Article 35A ceased	Aug 5, 2019	Same date

Table of Books:

#	Title	Author	Edition	Year	Publisher	Pages Examined	35A Mention
1	Constitutional Law of India	H.M. Seervai	4th	1991-93	N.M. Tripathi	Complete index, Part XXI	NO
2	Indian Constitutional Law	M.P. Jain	8th	2018	LexisNexis	Chapters on Art.370,Fund.Rights	NO
3	Durga Das Basu on Constitution	Durga Das Basu	20th	2011	LexisNexis	Complete text	Yes footnote only.
4	Bare Act	Parliament	recurring	1991-2019	Government, Universal	Full Text.	NO

©author